

MAR 11 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS MICHAEL N. MILBY, CLERK OF COURT
HOUSTON DIVISION**

**JAMES FALCON, on Behalf of Himself
and Others Similarly Situated,**

Plaintiffs,

vs.

**STARBUCKS CORPORATION and
DOES 1 through 100,**

Defendants.

H 05 - 0792

CIVIL ACTION NO.

**[COLLECTIVE ACTION]
JURY TRIAL DEMANDED**

PLAINTIFF'S COLLECTIVE ACTION COMPLAINT

Plaintiff James Falcon (“Falcon”) brings this collective action complaint on behalf of himself and others similarly situated to recover unpaid overtime wages from Starbucks Corporation (“Starbucks”) and Does 1 through 100 (“Does”) (collectively “Defendants”).

I. NATURE OF SUIT

1. The Fair Labor Standards Act (“FLSA”) is designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers” 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. 29 U.S.C. §§ 206(a) & 207(a).

2. The overtime requirements of the FLSA serve the purposes of: 1) spreading out employment by placing financial pressure on the employer to hire additional workers rather than employing the same number of workers for longer hours; and 2) compensating employees who work overtime.

3. Starbucks violates the FLSA by failing to pay its assistant managers time and one-half for each hour worked in excess of forty (40) per workweek. Accordingly, Plaintiff brings this collective action to recover unpaid overtime compensation under section 216(b) of the FLSA.

II. JURISDICTION AND VENUE

4. This court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 because it arises under the laws of the United States, specifically under the FLSA, 29 U.S.C. § 201, *et seq.*

5. Plaintiff's claims arise under section 16(b) of the FLSA. 29 U.S.C. § 216(b). In connection with the acts and course of conduct alleged in this complaint, Plaintiff engaged in commerce or in the production of goods for commerce. Further, Starbucks is an employer that engaged and continues to engage in commerce or in the production of goods for commerce and is therefore covered by the FLSA.

6. Venue is proper in the Southern District of Texas – Houston Division because a substantial part of the acts and conduct charged herein occurred in this district.

III. THE PARTIES

7. Plaintiff James Falcon is a resident of Harris County, Texas. Falcon was an employee employed by Starbucks within the meaning of the FLSA. Falcon's consent to this action is attached as Exhibit 1.

8. The class of similarly situated employees consists of all current and former assistant managers of Starbucks who were not paid time and one-half for each hour worked in excess of forty (40) per workweek. These similarly situated persons are referred to as "Members of the Class" or "the Class."

9. Defendant Starbucks is a foreign corporation, qualified to do and doing business in Texas, and is within the jurisdiction of this Court. Starbucks is an "employer" under the

FLSA and acted as such in relation to Plaintiffs and Members of the Class. Starbucks may be served with process through its registered agent, Prentice Hall Corporation System, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

10. At this time, Plaintiff is unaware of the true names and capacities of the defendants sued herein as Does 1 through 100, inclusive, and therefore Plaintiff sues such defendants by fictitious names. Plaintiff will seek leave of this Court to amend this Complaint when Plaintiff ascertains the true names and capacities of Does, who are individuals and/or entities. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named defendants was responsible for the occurrences alleged herein and proximately caused the injuries and damages sustained by Plaintiff alleged herein.

IV. FACTS UNDERLYING THE CLAIMS

11. Plaintiff is a former employee who was employed by Starbucks as an assistant manager. As an assistant manager, Plaintiff's primary duties consisted of performing the duties of baristas, who are classified by Starbucks as non-exempt, hourly employees. These barista duties included, among other things, waiting on customers, making drinks for customers, serving customers, operating the cash register, ensuring that the store remained clean and orderly, and cleaning and maintaining store equipment.

12. Although Plaintiff did perform some managerial duties as assistant manager, Plaintiff performed such duties less than forty percent (40%) of the time while employed by Starbucks. Plaintiff rarely exercised discretionary powers, and he was not relatively free from supervision concerning matters of significance, including scheduling employees and making decisions with respect to human resources issues. Any relative freedom from supervision that did exist for Plaintiff is the same as that which Starbucks afforded, and continues to afford, other non-exempt "managerial" employees, such as shift supervisors. Moreover, the limited managerial duties of Plaintiff were relatively unimportant in comparison to the non-exempt

duties Plaintiff performed. Accordingly, Plaintiff's primary job duties were those of a non-exempt employee under the FLSA.

13. As an assistant manager, Plaintiff regularly worked more than forty (40) hours per workweek, and in fact, worked an average of fifty (50) hours per workweek.

14. Because Plaintiff was a non-exempt employee, Starbucks was required to pay Plaintiff time and one-half for each hour worked in excess of forty (40) per workweek. However, Starbucks inappropriately and improperly classified Plaintiff as an exempt employee under the FLSA, and failed to compensate Plaintiff for all hours he worked in excess of forty (40) hours in a workweek at time and one-half.

15. Starbucks' illegal pattern and practice with respect to denying payment to Plaintiff for overtime compensation was and is in violation of the FLSA. Starbucks knew or should have known that its policies and practices violate the FLSA, and Starbucks has not made a good faith effort to comply with the FLSA. Rather, Starbucks knowingly, willfully, and/or with reckless disregard carried out its illegal pattern or practice regarding failure to pay Plaintiff overtime compensation. Further, as set forth below, other prior and current assistant managers of Starbucks were subjected to the same wrongful policies, practices, and/or procedures.

V. COLLECTIVE ACTION ALLEGATIONS

16. Other persons employed by Starbucks as assistant managers have been victimized by the foregoing patterns, practices, and/or policies, which are in violation of the FLSA. Many of these employees have worked with Plaintiff over the years and have reported that they were not paid time and one-half for hours worked in excess of forty (40) during a workweek. Thus, from discussions with these employees and former employees, Plaintiff is aware that the illegal practices or policies imposed on Plaintiff have been imposed on other current and former assistant managers employed by Starbucks.

17. Accordingly, Starbucks' pattern or practice of failing to pay its assistant managers time and one-half for all hours worked in excess of forty (40) in a workweek is a generally applicable policy or practice and does not depend on the personal circumstances of the Members

of the Class. Thus, Plaintiff's experience is typical of the experience of the Members of the Class.

18. All assistant managers employed by Starbucks who were denied overtime compensation for hours worked in excess of forty (40) in a workweek are similarly situated. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The class is therefore defined as:

All current and former assistant managers employed by Starbucks at any time during the time period of March 11, 2002 to present who were denied overtime compensation for hours worked in excess of forty (40) in a workweek.

VI. CAUSES OF ACTION

19. Plaintiff incorporates herein all allegations contained in paragraphs 1 through 18.

20. Starbucks' practice of failing to pay its assistant managers overtime compensation at time and one-half for all hours worked in excess of forty (40) hours in a workweek was and is in violation of the FLSA. Accordingly, Plaintiff and all those similarly situated are entitled to be paid time and one-half for each hour worked in excess of forty (40) per workweek, and to have such overtime calculated in accordance with the Code of Federal Regulations, including commission/bonus payments earned in the appropriate workweek in the calculation of the regular rate for the purposes of determining overtime entitlement.

21. Additionally, Plaintiff and all those similarly situated are entitled to an amount equal to all their unpaid wages as liquidated damages, as well as reasonable attorneys' fees and costs of this action.

VII. JURY DEMAND

22 Plaintiff hereby demands a trial by jury.

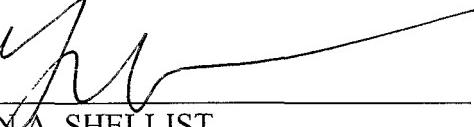
VIII. PRAYER

24. WHEREFORE, Plaintiff James Falcon respectfully requests that judgment be entered in his favor, awarding him and all similarly situated employees:

- a. overtime wages for all unpaid hours worked in excess of forty (40) hours in a workweek at the rate of one and one-half (1 ½) times his regular hourly rate;
- b. an equal amount as liquidated damages as allowed under the FLSA;
- c. an injunction against further violations;
- d. reasonable attorneys' fees, costs, and expenses of this action as provided by the FLSA; and
- e. such other and further relief as may be required by law.

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Respectfully submitted,

By: 

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OF COUNSEL:

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By: 

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OF COUNSEL:

DAS & DEBES, LTD., L.L.P.

Co-COUNSEL FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE Southern DISTRICT OF TEXAS
Houston DIVISION

James Falcon, et al.,

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Plaintiffs,

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Starbucks Corporation, et al.,

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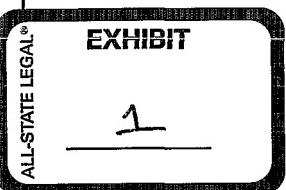
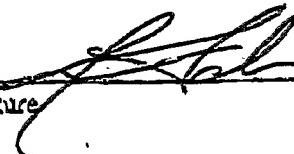
Defendants.

NOTICE OF CONSENT

I, James Falcon, hereby consent to be a party plaintiff in this case, which is a suit to recover unpaid wages under the Fair Labor Standards Act.

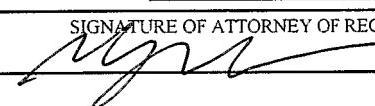
DATE: February 11, 2005.

Signature



CIVIL COVER SHEET
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

<p>I. (a) PLAINTIFFS JAMES FALCON, on Behalf of Himself and Others Similarly Situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>HARRIS</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small></p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) MARTIN A. SHELLIST/DARYL J. SINKULE SHELLIST, LORE & LAZARZ, LTD. 1900 West Loop South, Suite 1910 Houston, Texas 77027 (713) 621-2277</p>		<p>DEFENDANTS STARBUCKS CORPORATION and DOES 1 through 10</p> <p>County of Residence of First Listed Defendant _____ <small>(IN U.S. PLAINTIFF CASES ONLY)</small></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p style="text-align: center;">H 05 - 0792</p>																	
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<ul style="list-style-type: none"> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property 		<ul style="list-style-type: none"> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights 	<ul style="list-style-type: none"> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition 	<ul style="list-style-type: none"> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <ul style="list-style-type: none"> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <ul style="list-style-type: none"> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <ul style="list-style-type: none"> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 OTHER STATUTES <ul style="list-style-type: none"> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes 															
<p>V. ORIGIN (Place an "X" in One Box Only)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; vertical-align: top;"> <input checked="" type="checkbox"/> 1 Original Proceeding </td> <td style="width: 25%; vertical-align: top;"> <input type="checkbox"/> 2 Removed from State Court </td> <td style="width: 25%; vertical-align: top;"> <input type="checkbox"/> 3 Remanded from Appellate Court </td> <td style="width: 25%; vertical-align: top;"> <input type="checkbox"/> 4 Reinstated or Reopened </td> </tr> </table>		<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<p>Transferred from another district (specify) _____</p> <p>Appeal to District Judge from Magistrate Judgment <input type="checkbox"/> 7</p> <p>Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 201, et seq.</p>													
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened																
<p>VI. CAUSE OF ACTION</p> <p>Brief description of cause: Plaintiffs seek recovery of unpaid wages.</p>																			
<p>VII. REQUESTED IN COMPLAINT:</p> <p><input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23</p>		DEMAND \$	CHECK YES only if demanded in complaint: UNITED STATES COURTS JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No SOUTHERN DISTRICT OF TEXAS																
<p>VIII. RELATED CASE(S) IF ANY</p> <p>(See instructions)</p>		JUDGE	FILED DOCKET NUMBER MAR 11 2005																
<p>DATE 3-11-05</p> <p>FOR OFFICE USE ONLY</p>		<p>SIGNATURE OF ATTORNEY OF RECORD </p> <p>Martin A. Shellist/Daryl J. Sinkule</p> <p>MICHAEL N. MILBY, CLERK OF COURT</p> <p>JUDGE</p> <p>MAG. JUDGE</p>																	
<p>RECEIPT # _____ AMOUNT _____</p>		<p>APPLYING IFP _____</p>																	